

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

Civil Action No. 3:23-CV-641-L

**AARON CAIN MCKNIGHT; BPM
GLOBAL INVESTMENTS, LLC; BPM
ASSET MANAGEMENT, LLC;
SHERRY REBEKKA SIMS; KENNETH
MILLER; FROST and MILLER, LLP;
AND HARMONY BROOKE
MCKNIGHT,**

Defendants,

**ACCELERATED VENTURE
PARTNERS, LLC; and TIMOTHY
NEHER,**

Relief Defendants.

ORDER

On October 17, 2023, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (Doc. 39) (“Report”) was entered, recommending that the court deny Defendants Frost & Miller, LLP and Kenneth Miller’s Motion to Dismiss the Securities and Exchange Commission’s Complaint (“Motion”) (Doc. 22). Specifically, the Report recommends that the Motion, filed pursuant to Federal Rule of Civil Procedure 12(b)(6), be denied because the Securities and Exchange Commission’s (the “SEC”) allegations as to Frost & Miller, LLP and Kenneth Miller (“Defendants”) and the securities claims against them in Claims Five and Six of the Complaint are sufficient to state viable causes of action for: (1) Aiding and Abetting Violations

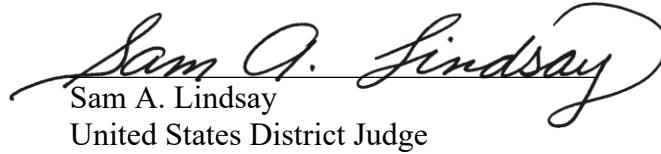
of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; and (2) Aiding and Abetting Violations of Section 10(b) of the Exchange Act.

On October 31, 2023, Defendants filed objections to the Report (Doc. 41), contending that: (1) the magistrate judge applied the wrong legal standard; (2) erroneously concluded that “red flags” are sufficient for aiding and abetting liability and, in particular, for alleging their “general awareness”; and (3) erroneously concluded that the allegations in the Complaint are sufficient to allege their “substantial assistance” as necessary for aiding and abetting liability.

The SEC disagrees and counters that the magistrate judge applied the correct legal standard, and its allegations are sufficient to support the claims alleged against Defendants in Counts Five and Six of the Complaint. Doc. 42. In addition, the SEC asserts that some of the arguments raised by Defendants are factual disputes that are not appropriate at the motion to dismiss stage. The court agrees with the SEC and finds no factual or legal errors in the Report.

Accordingly, having considered the Motion, briefs, pleadings, the file, Report, and record in this case, and having conducted a de nova review of the portions of the Report objected to by Defendants, the court determines that the magistrate judge’s findings and conclusions are correct; **accepts** them as those of the court; **overrules** Defendants’ objections (Doc. 41); and **denies** Defendants’ Motion (Doc. 22).

It is so ordered 21st day of November, 2023.



Sam A. Lindsay
United States District Judge